



Suzanne Henderson

**OIL, GAS AND MINERAL LEASE**

THE STATE OF TEXAS       \*  
                                      \*  
COUNTY OF TARRANT     \*

This Agreement made and entered into as of the date herein specified by and between Dillard Texas, LLC, a Delaware limited liability company, whose address is 4501 North Beach Street, Fort Worth, Texas 76137 (hereinafter referred to as "Lessor"), and Paloma Barnett, LLC, a Delaware limited liability company, whose address is 1021 Main Street, Suite 2600, Houston, Texas 77002 (hereinafter referred to as "Lessee"):

**WITNESSETH**

**1. GRANTING CLAUSE**

Lessor, in consideration of Ten Dollars (\$10.00) in hand paid, of the royalties herein provided and of the covenants of Lessee herein contained, hereby Grants, Leases and Lets exclusively unto Lessee for the sole and only purpose of investigating, exploring, prospecting, drilling, operating for, and producing oil, gas and all other liquid or gaseous minerals including sulfur produced as a component of oil and gas through the bore hole of an oil and gas well and laying the lines and erecting the tanks necessary to produce, save and transport products produced therefrom, the land in Tarrant County, Texas, described in Exhibit "A" attached hereto (the "Leased Premises").

All mineral rights other than oil, gas and all other liquid or gaseous minerals are expressly reserved to Lessor. These reserved mineral rights include the rights to lignite, coal and sulfur not produced as a component of oil and gas.

For the purpose of determining the amount of any bonus or other payment hereunder, said Leased Premises shall be deemed to contain **14.359** acres, whether actually containing more or less.

**2. PRIMARY TERM AND DRILLING COMMITMENT**

Subject to the other provisions herein contained, this lease shall be for a term of **three (3) years** from the date of the notarial acknowledgment of Lessor's execution of this instrument (hereinafter called "primary term") and so long thereafter as oil, gas or other minerals granted herein are produced from the Leased Premises or lands pooled therewith, in paying quantities, or drilling operations are in progress thereon as hereinafter provided, and the royalties are paid as provided herein.

**3. DELAY RENTALS**

Notwithstanding other provisions contained herein, no delay rentals are due under this lease.

**4. POOLING**

Lessee shall have the right but not the obligation to pool all of the Leased Premises or interest therein with any other lands or interests, as to any or all depths or zones, and as to any or all substances covered by this lease, either before or after the commencement of production, whenever Lessee deems it necessary or proper to do so in order to prudently develop or operate the Leased Premises, whether or not similar pooling authority exists with respect to such other lands or interests. The unit formed by such pooling for an oil well which is not a horizontal completion shall not exceed 80 acres plus a maximum acreage tolerance of 10%, and for a gas well or a horizontal completion shall not exceed 320 acres plus a maximum acreage tolerance of 10%. For the purpose of the foregoing, the terms "oil well" and "gas well" shall have the meanings prescribed by applicable law or the appropriate governmental authority, or, if no definition is so prescribed, "oil well" means a well with an initial gas-oil ratio of less than 100,000 cubic feet per barrel and "gas well" means a well with an initial gas-oil ratio of 100,000 cubic feet or more per barrel, based on 24-hour production test conducted under normal producing conditions using standard lease separator facilities or equivalent testing equipment. In exercising its pooling rights hereunder, within 90 days of first production, Lessee shall file of record a written declaration describing the unit and stating the effective date of pooling which may be retroactive to first production. Production, drilling or reworking operations anywhere on a unit which includes all of the Leased Premises shall be treated as if it were production, drilling or reworking operations on the Leased Premises, except that the production on which Lessor's royalty is calculated shall be that proportion of the total unit production which the net acreage covered by this Lease and included in the unit bears to the total gross acreage in the unit, but only to the extent such proportion of unit production is sold by Lessee. Pooling in one or more instances shall not exhaust Lessee's pooling rights hereunder, and Lessee shall have the recurring right but not the obligation to revise any unit formed hereunder by expansion or contraction or both, either before or after commencement of production, or to conform to any productive acreage determination made by such governmental authority. In making a revision, Lessee shall file of record a written declaration describing the revised unit and stating the effective date of revision. To the extent any portion of the Leased Premises is included in or excluded from the unit by virtue of such revision, the proportion of unit production on which royalties are payable hereunder shall thereafter be adjusted accordingly; provided that no part of the Leased Premises may be excluded from the pooled unit without Lessor's written consent. In the absence of production in paying quantities from a unit, or upon permanent cessation thereof, Lessee may terminate the unit by filing of record a written declaration describing the unit and stating the date of termination. Pooling hereunder shall not constitute a cross-conveyance of interests.

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The formation of any unit hereunder shall not have the effect of changing the ownership of any shut-in production royalty which may become payable under this Lease. If this Lease now or hereafter covers separate tracts, no pooling or unitization of royalty interest as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this Lease but Lessee shall nevertheless have the right to pool as provided above with consequent allocation of production as provided above. As used in this paragraph, the words 'separate tract' mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the Leased Premises.

## **5. CONTINUOUS DRILLING OF WELLS**

If at the expiration of the primary term, Lessee is then engaged in drilling operations or shall have completed a dry hole or a producing well on the Leased Premises within one hundred and eighty (180) days prior to the end of the primary term, the Lease shall remain in force so long as Lessee conducts a continuous drilling program in which the drilling of additional wells is prosecuted with no more than one hundred and eighty (180) days between the abandonment of a well as a dry hole or from the date of first sales of such well as a commercial producer and the commencement of actual drilling operations for an additional well. At such time as said continuous drilling program ceases, the provisions of Paragraph 6 will be applicable.

## **6. RETAINED ACREAGE**

### **A. Vertical Wells**

At the expiration of the primary term of this Lease or upon the termination of the continuous drilling program set forth in Paragraph 5, each vertical well drilled hereon capable of producing in paying quantities will hold only forty (40) acres for any formation from the surface to the base of the Barnett Shale formation. As to depths below the base of the Barnett Shale Formation, the proration unit shall be the minimum size necessary to obtain the maximum production allowable. If the proration unit for a vertical well completed below the base of the Barnett Shale Formation is larger than 40 acres, the well may maintain the Lease as to formations above the base of the Barnett Shale Formation as to not more than 40 acres. All other acreage except that included in a proration unit or pooled unit will be released (Partial Termination). To the extent possible each such proration unit will be in the shape of a square, with the well in the center. Further, it is understood and agreed that Lessee shall earn depths as to each proration unit or pooled unit only from the surface down a depth which is the stratigraphic equivalent to a depth of one hundred feet (100') below the deepest producing formation in such well which is capable of producing oil and gas in paying quantities at the expiration of the primary term of this Lease or upon the termination of the continuous drilling program set forth in Paragraph 5. This Lease will terminate at such time as to all depths below such depths as to each respective proration unit or pooled unit. If production should thereafter cease as to acreage included in a proration unit or pooled unit, this Lease will terminate as to such acreage unless Lessee commences reworking or additional drilling operations on such acreage within ninety (90) days thereafter and continues such reworking or additional drilling operations until commercial production is restored thereon, provided that if more than ninety (90) days elapse between the abandonment of such well as a dry hole and the commencement of actual drilling operations for an additional well, or more than ninety (90) days pass since the commencement of reworking operations without the restoration of commercial production, this Lease shall terminate as to the applicable proration unit or pooled unit.

At any time or times that this Lease terminates as to all or any portion of the acreage of the Leased Premises, Lessee shall promptly execute and record in the office of the County Clerk in the County where the Leased Premises are located, a proper release of such terminated acreage and shall furnish executed counterparts of each such release to Lessor at the address shown in Paragraph 19 hereof.

### **B. Horizontal Wells**

It is expressly understood and agreed that, subject to the other terms, provisions and limitations contained in this Lease, Lessee shall have the right to drill "horizontal wells" on the Leased Premises, or lands pooled therewith. The term "horizontal well" or "horizontally drilled well" shall mean any well that is drilled with one or more horizontal drainholes having a horizontal drainhole displacement of at least one hundred (100) feet. For the purposes of further defining the term "horizontal wells" and "horizontally drilled" reference is made to the definitions contained within Statewide Rule 86, as promulgated by the Railroad Commission of Texas, which definitions are incorporated herein for all purposes.

In the event of any Partial Termination as herein defined, then, with regard to a well which is a horizontal well or a horizontally drilled well, Lessee shall be entitled to retain all sands and horizons at all depths from the surface down to a depth which is the stratigraphic equivalent of a depth of one hundred (100) feet below the base of the deepest producing formation in such well which is capable of producing oil and gas in paying quantities, but only in a spacing unit the area or number of acres of which are equal to the area or number of acres determined by adding twenty (20) acres for each five hundred eighty-five (585) feet horizontally drilled to the original forty (40) acres deemed to be a proration unit for each vertical well. Each such tract around each horizontally drilled well shall be as nearly in the shape of a square or a rectangle as is practical with the boundaries of the tract including the entire horizontal drainhole and the lateral boundaries of such tract being approximately equal distance from such drainhole and parallel thereto.

If production should thereafter cease as to acreage included in a proration unit or pooled unit, this Lease will terminate as to such acreage unless Lessee commences reworking or additional drilling operations on such acreage within ninety (90) days thereafter and continues such reworking or additional drilling operations until commercial production is restored thereon, provided that if more than ninety (90) days pass between the abandonment of such well and the commencement of actual drilling operations for an additional well, or more than ninety (90) days pass since the commencement of reworking operations without the restoration of commercial production, the Lease shall terminate as to the applicable proration unit.

At any time or times that this Lease terminates as to all or any portion of the acreage of the Leased Premises, Lessee shall promptly execute and record in the office of the County Clerk in the County where the Leased Premises are located, a proper release of such terminated acreage and shall furnish executed counterparts of each such release to Lessor at the address shown in Paragraph 20 hereof.

## **7. OFFSET OBLIGATIONS**

In the event a well or wells producing oil or gas should be brought in on land within 467 feet from any boundary of the Leased Premises. Lessee agrees within ninety (90) days from commencement of production from such well or wells to commence, as a reasonably prudent operator would do under the same or similar circumstances, the actual drilling of an offset well or wells on the Leased Premises; provided that the well or wells which are to be offset are producing in paying quantities; or Lessee shall release and surrender all of Lessee's rights hereunder with respect to that portion of the Leased Premises, insofar and only insofar as it pertains to the offset producing formation, containing (i) 40 acres, in the case the offset well is a vertically completed well or (ii) 40 acres plus the amount of acreage assigned to such offset well pursuant to such Rule 86 of the Texas Railroad Commission for fields with less than 40 acre spacing, in the case the offset well is a horizontal well, in each case as near the shape of a square as practicable, located nearest to said offsetting well.

## **8. FORCE MAJEURE**

A. The term "force majeure" as used herein shall mean and include: requisition, order, regulation, or control by governmental authority or commission; exercise of rights or priority or control by governmental authority for national defense or war purpose resulting in delay in obtaining or inability to obtain either material, equipment or means of transportation normally necessary in prospecting or drilling for oil, gas or other mineral granted herein, or in producing, handling or transporting same from the Leased Premises; war; acts of God; insurrection; flood; or strike. Failure or inability of Lessee to obtain a satisfactory market for production or failure of purchasers or carriers to take or transport such production is not "force majeure."

B. Notwithstanding any other provisions of this Lease, but subject to the conditions hereinafter set forth in this Paragraph 8, should Lessee be prevented by "force majeure" as defined above, from conducting drilling or reworking operations on, or producing oil, gas or other mineral from, the Leased Premises, such failure shall not constitute a ground for the termination of this Lease or subject said Lessee to damages therefor; and the period of time during which Lessee is so prevented shall not be counted against Lessee, but this Lease shall be extended for a period of time equal to that during which such Lessee is so prevented from conducting such drilling or reworking operations on, or producing oil, gas or other mineral from, such Leased Premises. All of the provisions of this paragraph are subject to each of the following express conditions:

The terms and conditions of this paragraph shall not extend beyond the expiration date of any law, order, rule or regulation invoked under this paragraph, and shall be applicable and effective only during the following periods:

- (1) If the force majeure shall occur during the primary term of this Lease, it shall not operate to extend this Lease more than two (2) consecutive years beyond the expiration of the primary term.
- (2) If the force majeure shall occur during a ninety (90) day drilling or reworking period provided for in Paragraph 6 hereof or during a one hundred and eighty (180) day continuous drilling period as provided for in Paragraph 5, after the primary term has expired, then it shall not operate to extend the Lease more than two (2) successive years beyond the expiration of such ninety (90) day drilling or reworking period (Paragraph 6) or one hundred and eighty (180) day continuous drilling period.(Paragraph 5).

C. None of the provisions of this paragraph shall ever be or become effective and applicable unless Lessee shall, within a reasonable time (not to exceed sixty (60) days in any event) after occurrence of the claimed event of force majeure above referred to, notify the Lessor, in writing, of such occurrence with full particulars thereof.

D. The terms of this Paragraph do not apply to monetary payments which have accrued and were due under the terms of this lease before the force majeure event occurred.

## **9. SHUT-IN GAS WELL PROVISIONS**

If, during the primary term or thereafter, there is located on the Leased Premises (or land pooled therewith according to the pooling authority contained in this Lease) a well completed and capable of producing gas in commercial quantities, but the gas is not being sold due to lack of market, and this Lease is not being otherwise maintained in force, the Lessee may pay as royalty a sum of money equal to \$50.00 per acre for the referenced acreage per annum for the period commencing on the date the well is shut in. The first payment will be due not later than ninety (90) days after the date the well is shut in, and subsequent payments will be due annually thereafter (if this lease is not being otherwise maintained in force) on the anniversary date of the period for which the prior payment was made. Upon proper and timely payment of royalty under this paragraph, it will be considered that gas is being produced pursuant to paragraph 2 of this Lease. This Lease may not be maintained in force by the payment of shut-in royalties for more than a period of two (2) consecutive years without Lessor's written consent which shall not be unreasonably withheld.

Lessee shall not be entitled to recover any shut-in royalty payments from the future sale of gas. Should such shut-in royalty payments not be made in a timely manner as provided in this section, it will be considered for all purposes that there is no production and no excuse for delayed production of gas from any such well or wells, and unless there is then in effect other preservation provisions of this Lease, this Lease shall terminate. The obligation of Lessee to pay shut-in royalties is a condition and not a covenant. Lessee shall pay or tender directly to the Lessor at the address as shown in Paragraph 19 all shut-in royalty payments as required by this Lease.

#### **10. ROYALTIES**

Lessee shall pay to Lessor the following royalties, which royalties will never bear, either directly or indirectly, any part of the costs or expenses of pre- and post-production, production, separation, gathering, dehydration, compression, transportation, trucking, processing, treatment, storage, or marketing of the oil or gas produced from the leased premises incurred prior to the sale of such oil and gas to the first non-affiliate of Lessee, or any part of the incurred costs of construction, operation, or depreciation of any plant or other facilities or equipment used in the handling of oil or gas from the leased premises. It is the intent of the parties that the foregoing provisions of this paragraph are to be fully effective and enforceable and are not to be construed as "surplusage" under the principals set forth in *Heritage Resources v. Nations Bank*, 939 S.W.2d 118 (Tex. 1996). Notwithstanding anything to the contrary, Lessor's royalty will bear its pro-rata share of transportation charges for downstream transportation, provided the charges are made by a company which is not an affiliate of, or related party to, Lessee, and provided they do not exceed an amount reasonably commensurate with charges by non-affiliated entities to unrelated operators in the area of the leased premises.

A. On oil, gas (including flared gas) and casinghead gas, together with any other liquid or gaseous hydrocarbons recovered by lease operations such as drips or separators, twenty-five percent (25%) of the gross proceeds thereof. Such oil, gas and casinghead gas, together with any other liquid or gaseous hydrocarbons recovered by lease operations, is to be delivered free of cost at the well or to the credit of the Lessor into pipelines, gathering lines, barges or other facilities to which the wells and tanks on the property may be connected; or to be delivered in kind at the well or into tanks, gathering lines, barges or other shipping facilities provided by Lessor at Lessor's option and expense, such option to be exercised by Lessor from time to time, but for periods of not less than six (6) months at a time after ninety (90) days written notice to Lessee of Lessor's intention to take in kind such oil, gas or other hydrocarbons.

B. On products, twenty-five percent (25%) of the gross proceeds of sale thereof.

C. On residue gas or gas remaining after separation, extraction or processing operations, twenty-five percent (25%) of the gross proceeds of sale thereof.

D. For purposes of this Paragraph 10, the term "gross proceeds" shall mean for gas and products therefrom (i) the gross price at which gas or products therefrom are sold pursuant to a Gas Contract, as defined below, or (ii) if not sold pursuant to a Gas Contract, as defined below, the highest gross price reasonably obtainable for the quantity of gas or products available for sale, through good faith negotiations for gas or products produced from the Leased Premises at the place where such gas or product is available for sale on the date of such a contract with adequate provisions for redetermination of price at intervals of no less frequency than one (1) year to ensure that the production is being sold for no less than the current market price. Included within the definition of "gross proceeds" as used herein is the presumption that Gas Contracts are arms-length contracts with purchasers who are not subsidiaries or affiliates of Lessee. An "affiliate" includes, but is not limited to, the parent company or a subsidiary of Lessee, a corporation or other entity having common ownership with Lessee, a partner or joint venturer of Lessee with respect to the ownership or operation of the processing plant, a corporation or other entity in which Lessee owns a ten percent or greater interest, or any individual, corporation or other entity that owns a ten percent or greater interest in Lessee. In no event shall "gross proceeds" ever be less than the amount actually received by the Lessee for the sale of hydrocarbons. It is the intent of the parties that the provisions of this Section 10(D) are to be fully effective and enforceable and are not to be construed as "surplusage" under the principals set forth in *Heritage Resources v. NationsBank*, 939 S.W.2d 118 (Tex. 1996).

E. All royalties hereinabove provided shall be payable in cash (unless Lessor elects to take such royalty oil or gas in kind) to Lessor within one hundred twenty (120) days following the first commercial sale of production and thereafter no more than sixty (60) days after the end of the month following the month during which production takes place. Subject to the provisions of Paragraph 9 of this Lease concerning shut-in wells, royalties shall be paid to Lessor by Lessee and/or its assigns or by the product purchaser for oil and/or gas. Upon the failure of any party to pay Lessor the royalty as provided in this paragraph, Lessor may, at Lessor's option, elect to terminate this Lease by sending written notice to Lessee. Lessee shall then have thirty (30) days from the date of service of such written notice in which to avoid termination of this Lease by making or causing to be made the proper royalty payment or payments that should have been paid. If such royalty payment is not made on or before the expiration of the 30-day period, or written approval is not obtained from Lessor to defer such payment, Lessor may elect to terminate this Lease by filing a Notice of Termination with the County Clerk in the county where the Leased Premises are located. The effective date of said termination shall be the date said Notice of Termination is filed with the said County Clerk.

F. Lessee agrees that it will not enter into any contract for the sale, delivery, transporting or processing of gas produced from the Leased Premises which shall extend more than two (2) years from the effective date of such sales contract unless such contract has adequate provisions for redetermination of price at intervals of no less frequency than one (1) year to ensure that production from this Lease is not being sold for less than the then current market value. In the event Lessor elects to take and separately dispose of its royalty share of gas, the parties shall enter into a mutually acceptable balancing agreement providing for (a)

the right of an underproduced party to make up an imbalance by taking up to 150 percent of its share of production and (b) an obligation to settle any imbalance remaining after depletion in cash, based on the proceeds received by the overproduced party when the imbalance was created, or if the overproduced party's gas was used but not sold, based on the market value of the gas when imbalance was created.

G. In the event Lessee enters into a gas purchase contract which contains what is commonly referred to as a "take or pay provision" (such provision meaning that the gas purchaser agrees to take delivery of a specified minimum volume or quantity of gas over a specified term at a specified price or to make minimum periodic payments to the producer for gas not taken by the purchaser) and the purchaser under such gas purchase contract makes payment to Lessee by virtue of such purchaser's failure to take delivery of such minimum volume or quantity of gas, then Lessor shall be entitled to twenty-five percent (25%) of all such sums paid to Lessee or producer under the "pay" provisions of such gas purchase contract. Such royalty payments shall be due and owing to Lessor within sixty (60) days after the receipt of such payments by Lessee. If the gas purchaser "makes up" such gas within the period called for in the gas contract and Lessee is required to give such purchaser a credit for gas previously paid for but not taken, then Lessor shall not be entitled to royalty on such "make up" gas. If Lessee is not producing any quantities of gas from the Leased Premises but is receiving payments under the "pay" portion of such "take or pay" gas purchase contract provision, such payments shall not relieve Lessee of the duty to make shut-in royalty payments if Lessee desires to continue this Lease, but such "take or pay" royalty payments shall be applied as a credit against any shut-in royalty obligation of the Lessee. Lessor shall be a third-party beneficiary of any gas purchase contract and/or transportation agreement entered into between Lessee and any purchaser and/or transporter of Lessor's gas, irrespective of any provision of said contracts to the contrary, and such gas purchase contract and/or transportation agreement will expressly so provide. Further, Lessor shall be entitled to twenty-five percent (25%) of the value of any benefits obtained by or granted to Lessee from any gas purchaser and/or transporter for the amendment, modification, extension, alteration, consolidation, transfer, cancellation or settlement of any gas purchase contract and/or transportation agreement.

H. Lessee agrees that before any gas produced from the Leased Premises is used or sold off the Leased Premises, it will be run, free of cost to Lessor, through an adequate oil and gas separator of a conventional type or equipment at least as efficient, to the end that all liquid hydrocarbons recoverable from the gas by such means will be recovered on the lease and Lessor properly compensated therefor.

I. Any payment of royalty or shut-in gas royalty hereunder paid to Lessor in excess of the amount actually due to the Lessor shall nevertheless become the property of the Lessor if Lessee does not make written request to Lessor for reimbursement within one (1) year from the date that Lessor received the erroneous payment, it being agreed and expressly understood between the parties hereto that Lessor is not the collecting agent for any other royalty owner under the lands covered hereby, and a determination of the name, interest ownership and whereabouts of any person entitled to any payment whatsoever under the terms hereof shall be the sole responsibility of Lessee. It is further expressly agreed and understood that: (i) this provision shall in no way diminish the obligation of Lessee to make full and punctual payments of all amounts due to Lessor or to any other person under the terms and provisions of this Lease, and (ii) any overpayments made to the Lessor under any provisions of this Lease shall not be entitled to be offset against future amounts payable to parties hereunder.

J. The terms of this Lease may not be amended by any division order.

K. Lessee shall pay Lessor royalty on all gas produced from a well on the Leased Premises and sold or used off the Leased Premises, regardless of whether or not such gas is produced to the credit of Lessee or sold under a contract executed by or binding on Lessee. Should gas be sold under a sales contract not binding on Lessee, Lessor's royalty will be calculated based on the highest price paid for any of the gas produced from the well from which such gas is produced. In no event will the price paid Lessor for Lessor's share of gas be less than the price paid Lessee for Lessee's share of gas.

## **11. INFORMATION, ACCESS AND REPORTS**

A. Lessee agrees to furnish Lessor, or Lessor's nominee, currently and promptly, upon written request, with full well information (if available) including cores, cuttings, samples, logs (including Schlumberger and other electrical logs), copies and results of deviation tests and directional and seismic surveys, and the results of all drill stem tests and other tests of other kind or character that may be made of wells on the Leased Premises. Upon written request and solely on an annual basis, Lessor or Lessor's nominee may be furnished with and have free access to Lessee's books and records relative to the production and sale of oil, gas or other minerals from the Leased Premises, including reports of every kind and character to governmental authorities, State or Federal, on an annual basis. Lessor shall have the right at its election and own expense to employ gaugers or install meters to gauge or measure the production of all minerals produced from the premises, and Lessee agrees to prepare and deliver to Lessor or Lessor's gauger or nominee duplicate run or gauge tickets for all minerals removed from the Leased Premises upon written request by Lessor.

B. Upon written request, Lessee shall furnish to Lessor, a copy of any gas purchase contract or transportation agreement entered into in connection with the Leased Premises, or if there is already a gas purchase contract or transportation agreement in effect due to Lessee's operations in the field, then a copy of that contract. Upon written request of Lessor and without cost to the Lessor, Lessee shall furnish Lessor a copy of the following reports (if available): core record, core analysis, well completion, bottom hole pressure measurement, directional survey records, electrical and induction surveys and logs, gas and oil ratio reports, paleontological reports pertaining to the paleontology of the formations encountered in the drilling of any wells on the Leased Premises, and all other reports which pertain to the drilling, completing or operating of the wells located on the Leased Premises. Such information shall be solely for Lessor's use, and Lessor shall keep same confidential after receipt unless compelled by law to disclose same.

C. Upon written request, Lessee shall advise Lessor in writing of the location of all wells drilled upon the Leased Premises or lands pooled therewith and shall advise Lessor in writing the date of completion and/or abandonment of each well drilled.

## **12. SURVEYS, ABSTRACTS, TITLE OPINIONS AND CURATIVE WORK**

In the event Lessee causes an abstract of title to be prepared covering the property herein leased, or any portion thereof, Lessor shall have access to said abstract at any reasonable time, upon written request by Lessor. In addition, Lessor agrees to furnish his abstracts to Lessee for a period of 30 days. In the event Lessee shall cause the title to be examined or should obtain a title opinion or title certificate upon the property herein leased, Lessee agrees to furnish Lessor a copy or photostatic copy thereof, upon written request by Lessor, within a reasonable time of receipt of the same by Lessee with the understanding that neither Lessee nor the attorney or firm of attorneys rendering the opinion or certificate shall be responsible to Lessor for the correctness of said opinion. The opinion or certificate being furnished will simply be provided to the Lessor for his own convenience, information and personal use. Similarly, if any curative material is obtained by Lessee, upon written request, a copy thereof shall be furnished Lessor under the same conditions of non-liability on the part of the Lessee or the persons who may have obtained or prepared the same.

## **13. USE OF THE SURFACE AND SUBSURFACE**

A. Notwithstanding any other terms of this lease, Lessee, its successors and assigns, are not allowed to use the surface of the Leased Premises for any purpose.

B. Lessee shall use the highest degree of care and all reasonable safeguards to prevent contamination or pollution of any environmental medium, including soil, surface waters, groundwater, sediments, and surface or subsurface strata, ambient air or any other environmental medium in, on, or under, the Leased Premises, by any waste, pollutant, or contaminant. Lessee shall not bring or permit to remain on the Leased Premises any explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation ("Hazardous Materials"), except products commonly used in connection with oil and gas exploration and development operations and stored in the usual manner and quantities. Lessee shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the presence or release of any Hazardous Materials in, on, under, or about the Leased Premises resulting from Lessee's operations on the Leased Premises. Additionally, as used in this paragraph, "Remedial Work" is defined as any site investigation or monitoring, any cleanup, containment, remediation, removal, or restoration work performed in response to any federal, state, or local governmental authority, required under any applicable federal, state or local statute, regulation or permit, or required by Lessor. Lessee agrees (a) to remove from the Leased Premises, if and as required by any law, permit or regulation, any Hazardous Materials placed or released thereon by Lessee, (b) to perform all Remedial Work where the need therefor arises in connection with Lessee's operations or activities on the Leased Premises, and (c) to comply in all respects with all federal, state and local governmental laws and regulations governing operations, Hazardous Materials and Remedial Work on or associated with the Leased Premises. Lessee promises to notify Lessor of any claim or other action by any governmental agency or other third party involving the actual or suspected existence of Hazardous Materials on the Leased Premises, and to provide Lessor with copies of (1) any notice of any release of Hazardous Materials given by Lessee pursuant to any law or regulation, and (2) any report of and response to any such incident. In addition to any other indemnity set forth in this Lease, LESSEE AGREES TO INDEMNIFY, PAY AND PROTECT, DEFEND AND SAVE ALL OF THE INDEMNIFIED PARTIES (DEFINED AS LESSOR, HIS AGENTS, SERVANTS, EMPLOYEES AND ASSIGNS) HARMLESS FROM ALL CLAIMS, LIABILITIES, DAMAGES, FEES AND EXPENSES THAT ARISE EITHER DURING THE TERM OF THIS LEASE OR THEREAFTER, DIRECTLY OR INDIRECTLY FROM THE ACTUAL OR ALLEGED PRESENCE OR RELEASE OF ANY HAZARDOUS MATERIAL IN CONNECTION WITH LESSEE'S USE, MANAGEMENT, OR OPERATIONS ON THE LEASED PREMISES. Indemnification shall include, but is not limited to, costs in connection with any Remedial Work when performed by Lessor or any third party requested by any federal, state or local governmental authority. The obligations and indemnity of Lessee hereunder shall survive the expiration or earlier termination, for any reason, of this Lease.

D. Subject to the other provisions of this Lease, Lessee shall have the right under this Lease: (i) to explore the subsurface of the Leased Premises, and (ii) to drill, or otherwise operate under, and produce from, any portions of the subsurface of the lands described in Exhibit "A" as to which this Lease remains in force from wells located on surface locations off of such lands.

E. Lessor reserves the right of ingress and egress across the surface and subsurface of the Leased Premises, both now and hereafter, to explore for and develop minerals on adjoining lands. This reservation includes but is not limited to the use of the Leased Premises for drill sites, tank batteries, pipelines and any other facilities or operations necessary for said exploration and development. Any compensation, including royalties, paid for the right to use the Leased Premises for surface locations shall belong solely to Lessor.

F. Lessor expressly reserves all rights with respect to the surface and subsurface of the Leased Premises (the ownership of which shall remain vested in Lessor) for any and all purposes except those specifically granted to Lessee. Without limiting the foregoing, Lessor expressly reserves the right to explore by any method, drill for, mine, produce, treat and store and transport any and all minerals other than those covered by this Lease, as well as the right to use the Leased Premises for the purposes of, without limitation, residential development, commercial and industrial uses, farming, grazing, trapping, fishing and hunting on the Leased Premises, and for the purpose of ingress and egress to and from other tracts of land owned by Lessor in the vicinity. Both the rights retained by

Lessor and the rights granted to Lessee shall be exercised in such manner that neither shall unduly interfere with the operations of the other upon the Leased Premises.

#### **14. ASSIGNABILITY BY LESSEE**

Lessee may assign this lease to Chesapeake Exploration, LLC ("Chesapeake") or to any other entity that Lessee wishes provided Lessee or Chesapeake remains the operator of this Lease. Lessee hereby agrees not to assign this Lease to any other entity except to Lessee's or Chesapeake's officers, subsidiaries and affiliates, without prior written permission of Lessor, which permission may be withheld in the sole discretion of the Lessor. Provided that, Lessor's permission shall not be required in connection with the merger or combination of Lessee or Chesapeake and another entity, or a sale of all or substantially all of Lessee's or Chesapeake's leases in the county where the Lease is located.

For any transfer or assignment of this Lease by Lessee, the transferee or assignee must specifically agree in writing to comply with the provisions of this Lease. All transfers (including assignments, sales, subleases, overriding royalty conveyances, or production payment arrangements) must be recorded in the county where the Lease is located, and the recorded transfer or a copy certified by the County Clerk of the county where the transfer is recorded must be delivered to the Lessor within ninety (90) days of the execution date. Every transferee shall succeed to all rights and be subject to all obligations, liabilities, and penalties owed to the Lessor by the original Lessee or any prior transferee of the lease, including any liabilities to the Lessor for unpaid royalties.

#### **15. ASSIGNABILITY BY LESSOR**

The rights of Lessor hereunder may be assigned in whole or in part, and the provisions hereof shall extend to Lessor's successors and assigns, but no change or division in the ownership of the land or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee and no such change in ownership shall be binding on Lessee for any purpose until thirty (30) days after Lessee has been furnished with a certified copy of the recorded instrument or instruments or other evidence satisfactory to Lessee of such change of ownership.

#### **16. NO WARRANTY**

This lease is given and granted without warranty, express or implied, in law or in equity. Lessor agrees that Lessee, at Lessee's option, may purchase or discharge, in whole or in part, any tax, mortgage or other lien upon the Leased Premises and thereupon be subrogated to the rights of the holder thereof, and may apply royalties accruing hereunder toward satisfying same or reimbursing Lessee. It is also agreed that if Lessor owns an interest in the Leased Premises less than the entire fee simple estate, the royalties to be paid Lessor shall be reduced proportionately.

#### **17. INDEMNITY**

Lessee agrees to hold Lessor and the Indemnified Parties as defined herein harmless from all claims for damages caused to stock, crops, trapping or grazing lands, fences, buildings or other structures, and from any and all claims for injuries to (including death of) persons or damage to property in connection with the drilling of any of its wells or other operations under this Lease, and to defend at Lessee's expense any suit brought against Lessor and the Indemnified Parties on account of such claims, including all claims involving environmental matters, as well as any alleged violation of any state, local or federal rule or regulation, allegedly occasioned by, or allegedly arising out of, or allegedly resulting from Lessee's operations on the Leased Premises, and to pay any judgment against Lessor and the Indemnified Parties resulting from any such suit. Lessee further agrees that it will use due care to avoid damage to, or destruction of, stock, crops, land, timber, fences, buildings and other structures belonging to Lessor and will use due care to avoid damage to the value of Lessor's lands as farming, trapping and grazing lands, and that Lessee will compensate Lessor for any damage suffered by Lessor as the result of any such damage and/or destruction.

Lessor agrees to indemnify Lessee and hold it harmless from all claims, damages, losses, judgments and causes of action (and defend at Lessor's expense any suit against Lessee) resulting or arising from Lessor's conduct or operations or negligence, if any, on the Leased Premises.

Lessee assumes full responsibility and liability between the parties hereto for any pollution caused by Lessee's operations and agrees to promptly remedy and clean up any such pollution at Lessee's sole expense and to hold Lessor harmless from all claims for damages caused by such pollution. Lessee agrees to defend at Lessee's expense any such suit brought against Lessor and the Indemnified Parties on account of such claims, and to pay any final unappealable judgment against Lessor and the Indemnified Parties resulting from any such suit.

#### **18. NOTICES**

A. All notices, information, letters, surveys, reports, material, and all other documents, required or permitted to be sent to Lessor by Lessee shall be sent by certified United States mail, postage prepaid, return receipt requested, to the following address:

Dillard Texas, LLC  
4501 North Beach Street  
Fort Worth, Texas 76137

with a copy to:

Dillard Texas, LLC  
c/o Dillard's, Inc.  
1600 Cantrell Road  
Little Rock, Arkansas 72201  
Attn: Vice President, Real Estate

B. All notices required or permitted to be sent to Lessee by Lessor shall be sent to Lessee by certified United States mail, postage prepaid, return receipt requested, to the following address:

Paloma Barnett LLC  
1021 Main Street, Suite 2600  
Houston, Texas 77002

C. Service of notices, and other documents, hereunder is complete upon deposit of the mailed material in a post office or official depository under the care and custody of the United States Postal Service, in a postpaid, properly addressed and certified wrapper.

D. Any party hereto shall have the right to change the name or address of the person or persons required to receive notices, and other documents, by so notifying the other party in writing.

## **20. BREACH BY LESSEE**

Lessee shall conduct Lessee's operations in strict compliance with all of the terms and provisions of this lease and with all applicable local, state and federal rules and the regulations of any regulatory body having jurisdiction of such operations including, but not limited to, all local, state and federal environmental rules and regulations.

In the event Lessor considers that operations are not, at any time, being conducted in compliance with this Lease, or any implied covenant of this Lease, Lessor shall notify Lessee in writing of the facts relied upon as constituting a breach of any express or implied covenant or obligation of Lessee hereunder and, Lessee, if in default, shall have sixty (60) days after receipt of such notice in which to commence compliance with its obligations hereunder. Failure on the part of Lessee to timely commence efforts to rectify any such breach and to exercise diligence in remedying any such breach shall operate as a forfeiture of this Lease as to the portion thereof effected by such breach; provided that if Lessee, in good faith, disputes any alleged grounds of breach set forth in such notice, Lessee may, within said sixty (60) day period, institute a Declaratory Judgment Action in any District Court in a county where all or part of the said Leased Premises are located questioning whether it has in fact breached any expressed or implied covenant of this Lease, thereby staying any forfeiture during the pendency of such action. However, in the event that Lessor obtains a final unappealable judicial ascertainment in any such proceeding that Lessee is in breach of any covenant hereof, express or implied, then it is agreed that Lessor shall be entitled to a decree providing for cancellation or forfeiture of the Lease in the event such breach is not rectified or commenced in good faith to be rectified by Lessee within thirty (30) days from date such decree becomes final.

## **21. HECIV. NEEL NOTICE**

Lessee agrees to give notice to Lessor of the need, if any, to bring a claim or lawsuit against a third party who is draining, overproducing, unlawfully depleting, or otherwise damaging any reservoir underlying the Leased Premises, in a timely fashion so that Lessor may assert Lessor's own claim or lawsuit in a court of appropriate jurisdiction, or before a regulatory agency; Lessee shall give such notice to Lessor within ninety (90) days of the date that Lessee becomes aware of the need to assert such claim or lawsuit provided that Lessee's position is not adverse or potentially adverse to Lessor's position. Lessee acknowledges that Lessee is in a superior position to Lessor with respect to information regarding the geology, operations, production and sale of oil and gas and constituent hydrocarbons from the Leased Premises and lands adjacent, contiguous or in the vicinity of the Leased Premises and particularly with respect to reservoirs not on the Leased Premises which may be productive of oil, gas or other hydrocarbons and which underlay the Leased Premises. Therefore, with or without the notice required of Lessee above, in the event Lessee appears at, contests, prosecutes or otherwise takes regulatory action with any governmental agency with jurisdiction, then Lessee acknowledges that it has an affirmative duty to represent the Lessor's royalty interests with respect to any such action. Furthermore, with or without the notice required of Lessee above, in the event Lessee shall file a lawsuit and recover damages by virtue thereof or otherwise receives a sum of money from any third party on account of drainage, overproducing, unlawfully depleting or otherwise damaging any reservoir underlying the Leased Premises, by judgment, compromise settlement agreement, alternative dispute resolution or otherwise, then the Lessee will always be deemed to be also representing the royalty share of the Lessor in any recovery by or payment to the Lessee representing damage to the reservoir or any oil and gas well or any productive oil and gas sand or zone underlying the Leased Premises. Nothing herein shall preclude Lessor from bringing Lessor's own action but Lessor should never be required to, and Lessee shall always be deemed to be representing the Lessor's royalty share and shall pay same to the Lessor from recoveries or payments to Lessor by virtue or on account of the foregoing.

## **22. INSURANCE**

(a) To protect Lessor against liability, loss or expense arising from damage to property or injury to any person arising out of, in connection with or resulting from the exercise of its rights and

privileges under this Lease, Lessee agrees during the term of the Lease to carry, at its own expense, with insurance companies reasonably acceptable to Lessor and authorized to do business in the State of Texas, the following minimum insurance coverages. It is expressly understood and agreed that all such insurance required of Lessee by this Paragraph shall be primary to and non-contributory with other insurance issued directly to Lessor.

- (1) Workers' Compensation and Employers Liability Insurance with limits of \$500,000 to cover and include any liability (up to the maximum recoverable under applicable statutes) under or for the workers' compensation laws of the State of Texas, including provisions that claims *in rem* will be treated as *in personam*;
  - (2) Automobile Liability covering "any auto" or "all owned autos" with a minimum combined single limit of \$1,000,000 for Bodily Injury and Property Damage and including coverage for all owned, non-owned and leased vehicles;
  - (3) Commercial General Liability Insurance, including Contractual Liability, Products-Completed Operations Liability and Personal and Advertisement Liability, insuring the indemnity from Lessee to Lessor set forth in this Lease, with minimum Bodily Injury, Sickness or Death limits of one million dollars (\$1,000,000) each person and one million dollars (\$1,000,000) per occurrence and Property Loss or Damage limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate operations, protective, and products (including completed operations);
  - (4) Umbrella Liability Insurance with a minimum limit of ten million dollars (\$10,000,000) per occurrences, which covers all underlying coverages required in Paragraphs (a)(1), (2) and (3).
  - (5) Pollution and Clean-Up Liability Insurance with a minimum limit of ten million dollars (\$10,000,000); and
  - (6) Well Control and Extra Expense Insurance with a minimum limit of ten million dollars (\$10,000,000).
- (b) All insurance policies shall:
- (1) Provide for thirty (30) days prior written notice to Lessor of the cancellation, expiration or reduction of coverage under, or a material change in, any policy;
  - (2) Contain waivers of subrogation (except on Workers' Compensation Insurance) and right of recovery by Lessee's insurance underwriters against Lessor for injuries, death, losses or damages covered by those policies;
  - (3) Secure for Lessor the status of additional insured under the policy; and
  - (4) Be written by an insurance company rated A-VIII by A. M. Best.

(c) Lessee shall furnish Lessor, upon written request, with Lessee's certificates of insurance evidencing the above-described coverages prior to conducting any Operations under the Lease, which certificate(s) must show the names of all of Lessee's insurance companies, all policy numbers, effective and expiration dates of all insurance policies and all limits of liability. Thereafter, Lessee shall provide its certificates of insurance prior to the expiration of previously certificated insurance coverage. In lieu of providing its certificates of insurance, Lessee may provide copies of applicable insurance policies. The certificate(s) of insurance must be modified to required thirty (30) days notice of cancellation to Lessor. Copies of the Waiver of Subrogation and additional insured endorsements showing Lessor must be attached to the certificate(s).

(d) To the extent that any of the insurance requirements of this Section are not evidenced by Lessee's certificates of insurance, Lessee represents and warrants that the requirements are nonetheless fulfilled by the applicable policies of insurance.

(e) All insurance requirements may be met by a combination of self-insurance, primary and excess policies.

### **23. IMPLIED COVENANTS**

Nothing in this Lease negates the usual implied covenants imposed upon Lessee.

### **24. TERMS HERITABLE**

All of the terms and provisions of this Lease shall extend to and be binding upon the heirs, executors, administrators, successors and authorized assigns of the parties hereto.

**25. CAPTIONS**

The captions to the various paragraphs of the Lease are for convenience only, to be used primarily to more readily locate specific provisions. They shall not be considered a part of the Lease, nor shall they be used to interpret any of the lease provisions.

**26. COUNTERPARTS**

This Lease may be executed in multiple counterparts, each of which shall be deemed an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, this instrument is executed effective as of the date of the notarial acknowledgment of Lessor's execution.


**LESSOR**

DILLARD TEXAS, LLC, a Delaware limited liability company

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LESSEE:**

PALOMA BARNETT, LLC, a Delaware limited liability company

BY:   
Christopher A. O'Sullivan, President

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

Before me, \_\_\_\_\_, the undersigned notary public, on this day personally appeared \_\_\_\_\_ of Dillard Texas, LLC, a Delaware limited liability company, on behalf of the limited liability company, who is known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed that instrument for the purposes and consideration therein expressed, and in that capacity therein stated.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_

STATE OF Texas §  
COUNTY OF Tarrant §

Before me, Travis Teselle, the undersigned notary public, on this day personally appeared Christopher M. Seely as President of Paloma Barnett, LLC, a Delaware limited liability company, on behalf of said company, who is known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed that instrument for the purposes and consideration therein expressed, and in that capacity therein stated.

Given under my hand and seal of office this 23<sup>rd</sup> day of April, 2008.

Travis E. Teselle  
Notary Public, State of Texas

My Commission Expires: 9/25/11  
Commission Number: \_\_\_\_\_

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**25. CAPTIONS**

The captions to the various paragraphs of the Lease are for convenience only, to be used primarily to more readily locate specific provisions. They shall not be considered a part of the Lease, nor shall they be used to interpret any of the lease provisions.

**26. COUNTERPARTS**

This Lease may be executed in multiple counterparts, each of which shall be deemed an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, this instrument is executed effective as of the date of the notarial acknowledgment of Lessor's execution.

**LESSOR**

DILLARD TEXAS, LLC, a Delaware limited liability company

BY: 

Name: JAMES W. CHERRY, JR.

Title: VICE PRESIDENT

**LESSEE:**

PALOMA BARNETT, LLC, a Delaware limited liability company

BY: \_\_\_\_\_

\_\_\_\_\_, President

STATE OF Arkansas §

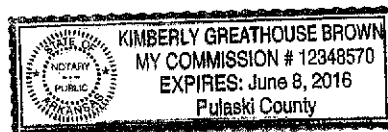
COUNTY OF Pulaski §

Before me Kimberly Greathouse Brown, the undersigned notary public, on this day personally appeared James W. Cherry, Jr. Vice President of Dillard Texas, LLC, a Delaware limited liability company, on behalf of the limited liability company, who is known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed that instrument for the purposes and consideration therein expressed, and in that capacity therein stated.

Given under my hand and seal of office this 23<sup>rd</sup> day of April, 2008.

  
Notary Public, State of \_\_\_\_\_

My Commission Expires: 06-08-16  
Commission Number: 12348570



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LEASED PREMISES**

(Attached to Oil, Gas and Mineral Lease from Dillard Texas, LLC  
to Paloma Barnett, LLC)

**PART III**  
**Legal Description**  
**Of**  
**Dillard Texas Parcel**

A 14.359 acre tract of land situated in the J. W. Lane Survey, Abstract No. 950, and the C. T. Lane Survey, Abstract No. 952, said 14.359 acre tract being known as Lot 2R-1, Homart Addition, an addition to the City of Arlington, Tarrant County, Texas, according to a plat recorded in Cabinet A, Slide 901, Plat Records of Tarrant County, Texas.